IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9837 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAWAL SHAYAR SURAJMAL

Versus

GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 9837 of 2002
HL PATEL ADVOCATES for Petitioner No. 1-7
MR MITUL K SHELAT for Respondent No. 1
MR DEVANG NANAVATI for Respondent No. 2
MR SOMPURA, Ld. AGP for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 11/10/2002

ORAL JUDGEMENT

1. Rule. Mr.Mitul Shelat, learned Counsel waives service of notice of rule on behalf of respondent No.1, Mr.V.K.Bhatt, learned Counsel waives service of notice of rule on behalf of respondent No.2 and Mr.Sompura, learned AGP waives service of notice of rule waives service of notice of rule on behalf of respondent No.3.

2. Heard the learned Counsel for the parties. With the consent of all the parties, the matter is taken up for final hearing today.

3. The short facts of the case are that the petitioners, who are students are aspirant to study BCA course. When the advertisement was issued by Centralised Admission Committee of the University for giving admission to BCA course, they did not apply pursuant the same. The details given on behalf of the University shows that there are 1881 seats of BCA, which includes free seats and payment seats available in all self-financed colleges and other colleges affiliated to Gujarat University. For the purpose of filling up all the said seats, 1936 forms were distributed by the University, out of which 1295 forms were received from the students, who were desirous of getting admission. The merit list was prepared on 5-7-2002 and it is the case of the University that on 10-7-2002, the process was completed and in all 576 students were admitted out of which 558 students were admitted on free seats and 18 students were admitted on payment seats. It is an admitted position that out of the total 1881 seats, the seats filled up by the centralised admission system are only 576 seats and the balance seats are still vacant in the respective colleges and they have not been filled up on account of non-availability of students at the relevant point of time.

4. The contention of the petitioners in the present petition is that the minimum qualification for the purpose of getting admission is 50% marks in 12th Standard and they are fulfilling the said requirements. They applied to the college authorities after the centralised admission procedure was over and it is the case of the petitioners that the college authorities have granted admission and have collected fees also and the petitioners are permitted to attend the classes for the purpose of study. However, on behalf of the college authorities it has been submitted that fees are not

collected, but the amount which is collected is as deposits and the petitioners were only permitted to attend the classes upto September 21, 2002 and they were allowed to attend the classes on different dates from 12th July, 2002 to 10th August, 2002. The stand of the college authorities is that as per the last instructions received from the University, the forms for the purpose of enrolments of the students in BCA were to be submitted on or before 16th September, 2002 and thereafter the said date together with the other faculties of commerce and science is extended to 30th September, 2002. It has been submitted on behalf of the petitioners that since they came to know that the University would not accept the admission granted to the petitioners by the college authorities and as a consequence thereof their forms may not be accepted, they have preferred this petition.

5. The contention raised on behalf of the University by Mr.S.N.Shelat, learned Sr. Counsel appearing with Mr.Mitul Shelat is that the rules for the purpose of granting admission to BCA were framed by the University in exercise of the power under Section 32 of the Gujarat Universities Act. It has been submitted that petitioners are those students who did not abide by the discipline of applying for admission within the stipulated time limit. The contention raised on behalf of the University is that if the students, at the relevant point of time, did not apply for admission to BCA and once the whole procedure is over, they cannot get admission by back-door entry. Mr.Shelat submitted that the college authorities could not have granted any admission to the petitioners and the only mode of admission permissible is by way of centralised admission procedure. It has also been submitted that the University has spent Rs.3 lac for the purpose of advertisement, etc., for undertaking the procedure of centralised admission procedure and if readvertisement for the vacant seats is made, it may result into burdening the University with the additional expenses. It has also been submitted on behalf of the University that when a decision was taken by the University to put a time limit for completing the procedure for admission of BCA course, if readvertisement is issued, it may result into further complications of not complying with the requisite norms and also now compliance to the requirements of the period for the full term may also arise. Mr.Shelat has relied upon the judgement of the Apex Court reported in 2002 (7) Judgement Today, 1 to contend that a student cannot be permitted to be admitted in the mid-term and even if the students are available, the same cannot be a ground for mid-term admissions. Mr.Shelat has also relied upon the

judgement of this Court reported in 2000(1) GLR, 884 to contend that this Court, in absence of any legal or constitutional infirmity, cannot substitute its judgement for that of academicians as if sitting in appeal. Mr.Shelat has also relied upon the judgement of the Apex Court reported in 1994(1), Judgement Today, 225 for contending that a back-door entry can never be permitted to be encouraged and he submitted that the students who are petitioners before this Court are admitted by way of back-door entry.

6. On behalf of the college authorities, Mr.Nanavati has relied upon the judgement of Apex Court reported in 1998(8) SCC, 501 for submitting that if the seats remain vacant and they are not allowed to be filled up, it may result into serious financial prejudice to the college authorities, more particularly when the students are available to get admission. However, he submitted that the college authorities are ready to abide by any mode or method which may be decided by the University for inviting students for admission to BCA. He submitted that the college in the present case is a self-financed college and it has to maintain affairs from its own means. If the requisite number of students from payment seats are not available, it may be difficult for the college to sustain in the field of education. He also submitted that the college authorities and more particularly his clients have no objection for reimbursement of any expenses which may be required to be incurred by the University for undertaking a fresh exercise by way of readvertisement or otherwise for inviting students for the purpose of getting admission to BCA. Mr.Nanavati submitted that it is not an absolute proposition that merely because the date is over the University has no way. Even in the past and more particularly last year such a situation had arisen and the University had issued a temporary ordinance for the purpose of modifying the date. Of course, Mr.Shelat submitted that it was an exceptional case. However, Mr.Nanavati submitted that the present case also is an exceptional, because the requisite number of students are not available as against the available number of seats and, therefore, it has been submitted that college authority would accept any modalities and or requirement, which may be decided by the University or any other mode for the purpose of inviting students to BCA course.

7. Having considered the above and more particularly in view of the legal position as prevailing, it is true that the Court, while exercising power under Article 226 of the Constitution of India cannot substitute its wisdom

as if it is exercising the appellate power. If there is a breach of any statutory provisions, then only the power can be exercised. As per the settled legal position, more particularly in the field of education, the jurisdiction of this Court under Article 226 is limited and, therefore, no mandamus can be issued for adopting a particular procedure by the University by substituting the wisdom, which University had applied for the purpose of exercising the power.

At the same time, it cannot be said that the Court has no jurisdiction at all, in a matter where the case falls in the realm of education. It is well-settled that the right to have education is treated as a fundamental right and, therefore, I am of the view that the matter is required to be examined from that angle.

8. The procedure adopted for the purpose of giving admission on the basis of inter se merit by way of centralised admission process is a rational procedure and there cannot be a second opinion to it, but at the same time, I am of view that there is no rationale in allowing the seats to be lapsed for the reasons which may be beyond the control of the persons who are concerned. In my view, if the seats are allowed to lapse it will not only results into wastage of public money, but it also results into foreclosing the opportunity to the aspirant candidates as well. It may also result into adversely affecting education at large in as much as those colleges which are self-financed colleges may not be in a position to sustain in the field of education, if the requisite number of students are either not made available or they are not allowed to be admitted. This does not mean that the college authorities can say with a view to maintain themselves they will not abide by the rules and regulations of the University, at the same time in a matter like this I find that the University should take a pragmatic view of the matter. University which is the body of expert is expected to exercise their power in such a manner that it encourages the students in the field of education and at the same time it should also allow the educational institutions to sustain because if the institutions would be there, then only the students will get opportunity to get education. This Court finds no justification in allowing the seats to be lapsed and, therefore, I am of the view that there should be a joint efforts on the part of the University as well as the college authorities to see that the seats which have remained vacant and if the students are available proper modality should be found in such a manner that the students are given opportunity and at the same time the

college authorities are in a position to maintain themselves and the University rules and regulations are also properly followed simultaneously. I am of the view that such exercise of power is expected on the part of the University. It happens sometimes that a student for the unavoidable reasons might not have applied or that a student may be aspirant to get admission in a better branch in comparison to BCA and, therefore, either he/she might not have applied or he might have applied to a different branch and by way of second thought he may be aspirant to get admission in BCA. If any meritorious candidate is left out in comparison to the student who is admitted or who is aspirant to get admission, then possibly such practice cannot be encouraged. When the question arises for the grant of admission, it has to be on the basis of inter se merits and, therefore, if the meritorious candidate is available, such meritorious student should be offered admission in comparison to less meritorious students.

9. So far as the date of enrolment and the completion of the term are concerned, in my view it is true that it is for the University to decide, but at the same time the such are the method and manner of regulating the education. There may not be any hard and rigid imposition, more particularly when the mode or rather the steps can be taken for the purpose of ensuring that the education of the students would not suffer. It has also come on record that last year the University did consider the said aspect and modified accordingly and, therefore, there can not be any absolute proposition that once regulations or rules have been framed for the purpose of fixing the outer limit for giving admission or for giving enrolment, it cannot be relaxed under any situation. If the University takes the positive view to advance the cause of education, the University can put the college authorities to undertake extra classes with a view to see that the students may get proper education and at the same time more opportunities are provided to the students and the seats are not allowed to be lapsed. I am inclined to make observations in view of the special circumstances that though number of seats are available for admission but on account of the expiry of the outer date, the students are unable to undergo or undertake the admission to BCA course.

10. In view of the above observations, I am of the view that in a matter like this it would be better to leave the matter to the discretion and wisdom of the University for enabling it to take a pragmatic view of the matter keeping in mind that the career of the

students are not put in jeopardy or more students get opportunities to study BCA and the colleges imparting education may be able to financially sustain.

11. In view of the above, I am of the view that the following directions would meet with the ends of justice:

11.1 The respondent No.1 University shall consider the matter in view of the aforesaid observations of this Court and at the time when the University considers the matter, it will be open to the petitioners as well respondent No.2 to make representations in this regard.

11.2 While considering the matter, the University shall keep all the relevant aspects in consideration, including the observations made by this Court and shall also take a pragmatic view of the matter. The University shall be at the liberty to decide the manner, method and modalities of filling up of the left out seats of BCA.

11.3 The University shall take such decision within a period of two weeks from today.

12. The petition is allowed only to the aforesaid extent. Rule is made absolute accordingly. No costs.

11-10-2002 (Jayant Patel, J.)

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